

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

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|------------------------------|---|-------------------|
| DONALD COREAU, |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| v. |) | Civil No. 95-37-B |
| |) | |
| ANDROSCOGGIN COUNTY JAIL and |) | |
| RONALD GAGNON, |) | |
| |) | |
| Defendants |) | |

RECOMMENDED DECISION

Before the Court is an action brought under 42 U.S.C. § 1983, wherein Plaintiff Donald Coreau, an inmate at the Maine State Prison, seeks damages from Defendant Androscoggin County Jail and Ronald Gagnon on the basis of an alleged violation of his constitutional rights while he was incarcerated at the Androscoggin County Jail. Defendants Bart Marks and Alfred B.Cichon were previously dismissed for the reason that Plaintiff had failed without cause to make service on them as required under the Federal Rule of Civil Procedure 4.

On November 24, 1995, Plaintiff filed a Motion to Dismiss without prejudice as to the remaining defendants. The Motion to Dismiss was served on Defendants' counsel on December 8, 1995. On December 12, 1995, Defendants, through their counsel, advised the Court that they object to the entry of dismissal without prejudice.

Because Defendants have appeared, Plaintiff must seek leave of Court to voluntarily dismiss the action. Fed. R. Civ. P. 41(a)(2). Dismissal under this Rule is without prejudice unless the Court specifies otherwise. *Id.*

Defendants filed no counterclaim in this matter. They do, however, appropriately assert

that a number of affirmative defenses may be available to them, including failure to state a claim upon which relief may be granted, qualified immunity, and the Plaintiff's own conduct as a legal cause for his injuries. Defendants have nevertheless chosen to preserve these defenses for trial, having failed to raise them by pre-trial motion.

Whether to grant Plaintiff's Motion to Dismiss is within the Court's discretion. *Eg.*, *Grover v. Eli Lilly & Co.*, 33 F.3d 716, 718 (6th Cir. 1994). Insofar as Defendants have expended relatively few resources in defense of this action to date, and given Plaintiff's *pro se* status, the Court finds the interests of justice would best be served by granting the Motion to Dismiss without Prejudice. *See id.*

CONCLUSION

Accordingly, I recommend that the Court DISMISS Plaintiff's Complaint without prejudice in accordance with Federal Rules of Civil Procedure 41(a)(2).

Notice

A party may file objections to those specified portions of this report or proposed findings or recommended decision for which de novo review by the district court is sought, together with a supporting memorandum, within ten days after being served with a copy hereof. A responsive memorandum shall be filed within ten days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated at Bangor, Maine this 5th day of January, 1996.

Eugene W. Beaulieu
U.S. Magistrate Judge